

## SUPREME COURT PENDING CASES

*The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.*

STATE *v.* JEAN JACQUES, SC 19783

*Judicial District of New London*

**Criminal; Search & Seizure; Whether Defendant had Reasonable Expectation of Privacy in Apartment such that Warrantless Search Illegal Where Defendant's Lease had Expired Prior to Search and While Defendant was Incarcerated.** On June 15, 2015, five days after entering into a month-to-month lease for a Norwich apartment, the defendant was arrested on a drug charge. A week later, he was charged with murder. The defendant's cellmate while he was incarcerated and awaiting trial reported to the police that the defendant told him that he stabbed the murder victim and that he took a bag of drugs and a cell phone from the victim's apartment and hid them in a hole in a wall in the bathroom of his apartment. The police conducted a warrantless search of the apartment with the landlord's consent and they saw a hole in the bathroom wall with a plastic bag tucked into it. After obtaining a search warrant, the police retrieved the cell phone and the bag of drugs from the hole. The defendant filed a motion to suppress the evidence seized in the search of the apartment. The trial court denied the motion to suppress, finding that the defendant had no reasonable expectation of privacy in the apartment because, when the police executed the search on July 15, 2015, the month-to-month lease that the defendant had entered into on June 10, 2015, had expired. The court noted that, during the entire initial month of the lease, the defendant had made no effort to contact the landlord about maintaining the lease and that he had made no arrangement with friends or family that the next month's rent be paid. The court found that the defendant had shown no interest in the apartment, that he was aware that he would likely be imprisoned for a long time, and that he never sought by any means to retrieve or secure any personal belongings he left there. The defendant was found guilty of murder after a jury trial, and he appeals, claiming that the trial court erred in denying his motion to suppress on finding that he had no reasonable expectation of privacy in the apartment where his lease had expired. The defendant argues that he had made the apartment his home when he signed the lease, paid the first month's rent, and moved his belongings into and occupied the apartment, and he urges that any warrantless search of a home is presumptively unreasonable and unconstitutional. Finally, while the defendant acknowledges that a person can no longer have a reasonable

expectation of privacy in a home that they have abandoned, he argues that he manifested no intent to abandon the apartment and that the state bore a heavy burden of demonstrating his intent to abandon, especially where his involuntary absence from the apartment was due to his arrest and incarceration.

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GEORGE E. MENDILLO *v.* TINLEY, RENEHAN & DOST,  
LLP et al., SC 19923  
*Judicial District of Litchfield*

**Attorneys; Sovereign Immunity; Whether Trial Court Lacked Jurisdiction Over Action Claiming That Appellate Court Violated Attorney's Constitutional Rights in Affirming Judgment that Found that Attorney Violated Rule of Professional Conduct.** In *Sowell v. DiCara*, 161 Conn. App. 102, cert. denied, 320 Conn. 909 (2015), the Appellate Court affirmed a trial court judgment finding that the plaintiff in this action, Attorney George Mendillo, violated the Rules of Professional Conduct by sending letters to opposing counsel's clients. The plaintiff attempted to challenge the Appellate Court's decision by way of a petition for certification, which the Supreme Court denied, and a writ of error, which the Supreme Court dismissed. The plaintiff thereafter brought this action against opposing counsel in *Sowell*, against the Appellate Court, and against the three Appellate Court judges who sat on the panel that decided *Sowell*. The plaintiff sought a declaratory judgment regarding the Appellate Court's application of the law in its decision. He also sought a declaratory judgment that the Appellate Court's decision was unconstitutional because it exceeded that court's constitutional authority and violated his rights to free speech, due process, and equal protection. In support of his declaratory judgment claims, the plaintiff argued that the Appellate Court's decision improperly found facts, relied on a conclusive presumption, and retroactively applied the rule of professional conduct at issue. The trial court granted the defendants' motion to dismiss the action for lack of subject matter jurisdiction, concluding that the concept of binding precedent prohibited it from overturning the Appellate Court's decision. The trial court also concluded that sovereign immunity barred the action as to the Appellate Court defendants and that the exception to sovereign immunity for substantial claims of constitutional violations did not apply because the Appellate Court's decision fell squarely within its state constitutional authority to exercise the judicial power of the state. The plaintiff appeals from the trial court's judgment of dismissal. In this appeal, the Supreme Court will

decide whether the trial court properly dismissed the plaintiff's declaratory judgment action for lack of subject matter jurisdiction under the concept of binding precedent. The Supreme Court will also decide whether the trial court properly dismissed the action as to the Appellate Court defendants on the ground that the claims against them were barred by sovereign immunity.

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STATE *v.* MITCHELL HENDERSON, SC 19947  
*Judicial District of Hartford*

**Criminal; Whether Defendant's Sentence Enhancements as Both a Persistent Dangerous Felony Offender and as a Persistent Serious Felony Offender Violated Double Jeopardy; Whether Legislature Contemplated Multiple Sentence Enhancements.** The defendant was convicted of robbery in the first degree and attempt to escape from custody. The defendant had a record of previous felony convictions, and the trial court enhanced his sentence on the robbery conviction after he pleaded guilty to being a persistent dangerous felony offender pursuant to General Statutes (Rev. to 1991) § 53a-40 (a), and enhanced his sentence on the escape conviction after he pleaded guilty to being a persistent serious felony offender pursuant to General Statutes § 53a-40 (b). The defendant brought this action by a motion to correct an illegal sentence, claiming that the enhanced sentences violated the multiple punishments prohibition of the double jeopardy clause and contravened the intent of the legislature behind § 53a-40 (a) and (b). The trial court denied the motion to correct, and the defendant appealed. The Appellate Court (173 Conn. App. 119) affirmed the judgment, rejecting the defendant's claim that his enhanced sentence as both a persistent dangerous felony offender and a persistent serious felony offender constituted multiple punishments for the same offense because both persistent offender charges arose out of the same transaction in that they relied on the same prior felony convictions as predicate offenses. The court opined that the proper inquiry was whether the acts or transactions underlying the robbery and attempted escape charges were the same, and that the defendant was not punished twice for the same crime in violation of double jeopardy when he received sentences for both robbery and attempted escape because those charges did not arise out of the same act or transaction and because robbery in the first degree and attempted escape are not the same crime for purposes of a double jeopardy analysis. Finally, the Appellate Court rejected the defendant's claim that the legislature did not intend to simultaneously punish an individ-

ual as both a persistent dangerous felony offender and as a persistent serious felony offender, finding that nothing in the plain language of the statutes or in their legislative history suggested that the sentence on only one of the charges brought against the defendant could be enhanced. The defendant appeals, and the Supreme Court will decide whether the Appellate Court properly concluded that the defendant's sentence was not illegal, that it does not violate the double jeopardy clause, and that it does not run contrary to legislative intent.

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*The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys' Office for the convenience of the bar. They in no way indicate the Supreme Court's view of the factual or legal aspects of the appeal.*

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